

## **REMARKS**

### **Introduction**

The present application includes claims 83-102, wherein claims 83, 90, and 97 are presented in independent form. Claims 83-102 are subject to an election of species requirement. Applicants acknowledge with appreciation the Examiner's indication that claim 102 contains allowable subject matter. Reconsideration and reversal of the rejection of claims 83-101 presented in the Office Action dated August 17, 2004 is respectfully requested in light of the following arguments.

### **Election of Species**

In response to the election of species requirement, provisionally elected on August 9, 2004, Applicants hereby elect Species 15 (claims 83, 86, 87, 89, 90, 93-97 and 99-102). It is respectfully submitted that claims 83, 86, 89, 90, 94, 96-97, and 100-102 are generic (readable on more than one of the species identified by the Examiner). Accordingly, claims 84, 85, 88, 91, 92, and 98 are hereby withdrawn pending the allowance of a generic claim from which they depend.

### **Request for Corrected Filing Receipt**

Applicants respectfully note their Request for Correction of Filing Receipt mailed April 16, 2004 was improperly denied. The response from the USPTO was mailed April 28, 2004. The reasons for the rejection were that "A claim for priority cannot be made based on an application filed after the application making the claim." Applicants are not attempting to claim priority to an application filed after the present application. Applicants are simply attempting to correct the filing receipt to show the proper priority listed in paragraph 1 of the present application. Applicants will respectfully resubmit their Request for Correction of Filing Receipt to the Office of Initial Patent Examination.

### **Specification**

In the present application, changes to the specification were made to address the Examiner's objections. The changes provide no new matter.

### **Claim Objections**

Claims 86, 89 and 97 were objected to because of informalities. Applicants have amended claims 86, 89, and 97 to incorporate the Examiner's recommendations.

Additionally, Applicants thank the Examiner for his indication that claim 102 was objected to as being dependant upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Prior Art Rejections**

The Examiner has rejected claims 83, 86, 87, 97, 100 and 101 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. Re. 35,201 to Krauska et al. (hereinafter “Krauska”). The Examiner rejected claims 86, 87, 97, and 99-101 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,862,529 to Peck (hereinafter “Peck”). The Examiner rejected claims 86, 87, 97, and 99-101 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,847,929 to Pupovic (hereinafter “Pupovic”).

### **§ 102(b) in view of Krauska**

Applicants respectfully submit that the Krauska patent simply does not support the Examiner’s rejection of claims 83, 86, 87, 97, 100 and 101 under 35 U.S.C. § 102(b) in light of the arguments and amendments made in this response. The case law clearly states that “anticipation requires that a single prior art reference disclose every limitation of the patent claim.” General Electric Co. v. Nintendo Co., 50 USPQ2d 1910, 1915 (Fed. Cir. 1999) (citing PPG Industries, Inc. v. Guardian Industries Corp., 37 USPQ2d 1618, 1624 (Fed. Cir. 1996)) (“to anticipate a claim, a reference must disclose every element of the challenged claims and enable one skilled in the art to make the anticipating subject matter.”). More particularly, the Federal Circuit has held that the test for anticipation is “[t]hat which would literally infringe if later in time anticipates if earlier than the date of invention.” Lewmar Marine, Inc. v. Barient, Inc., 827 F.2d 744, 3 USPQ2d 1776 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988).

Krauska describes a bed 10 including a base frame 12, a deck 14, and a linkage arrangement 16. Deck 14 includes a head section 32, an intermediate section 34, and a foot section 36. Intermediate section 34 moves between a first position and a second position relative to the base frame. Foot section 36 can move between a first position and a second position relative to the base frame.

### **Claim 83**

Krauska fails to teach or suggest a combination including “a base frame, an intermediate frame supported by the base frame, a deck supported by the intermediate frame, the deck including a seat section pivotable relative to the intermediate frame to move between

first and second positions...”. Krauska does not include an intermediate frame as required by amended claim 83. Krauska’s section 34 moves relative to the base frame and cannot move relative to an intermediate frame because no intermediate frame is disclosed.

Therefore, Applicants believes that amended claim 83 is in condition for allowance with respect to Krauska. Removal of the rejection and allowance of claim 83 is respectfully requested. If the Examiner should disagree with the Applicants’ arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

#### Claims 84-89

Claims 86, 87 and 89 depend from claim 83. In that claim 83 is believed to be allowable, claims 86, 87 and 89 are also believed to be allowable. Removal of the rejections and allowance of claims 86, 87 and 89 is respectfully requested.

Claims 84-85 depend from allowable generic claim 83. Accordingly, Applicants submit that claims 84-85 are appropriate for consideration and are likewise in condition for allowance.

Claim 88 depends from allowable generic claim 86. Accordingly, Applicants submit that claim 88 is appropriate for consideration and is likewise in condition for allowance.

#### Claim 97

For the reasons stated above for claim 83, Krauska fails to teach or suggest a combination including “a base frame, an intermediate frame supported by the base frame, a deck supported by the intermediate frame, the deck including a seat section pivotable relative to the intermediate frame to move between first and second positions...” as required by amended claim 97.

Applicants believe that claim 97 is in condition for allowance with respect to Krauska. Removal of the rejection and allowance of claim 97 is respectfully requested. If the Examiner should disagree with the Applicants’ arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

#### Claims 98-102

Claims 99-102 depend from claim 97. In that claim 97 is believed to be allowable, claims 99-102 are also believed to be allowable. Removal of the rejections and allowance of claims 99-102 is respectfully requested.

Claim 98 depends from allowable generic claim 97. Accordingly, Applicants submit that claim 98 is appropriate for consideration and is likewise in condition for allowance.

**§ 102(b) in view of Peck**

Applicants respectfully submit that the Peck patent simply does not support the Examiner's rejection of claims 83, 86, 87, 89, 97, and 99-101 under 35 U.S.C. § 102(b) in light of the amendments to claims 83, 89, and 97.

Peck relates to a hospital bed convertible to a chair. Peck includes a base frame 10, fixed frame 15, and a retracting frame 25. Additionally, Peck includes a head panel 31, a seat panel 30, a thigh panel 33, and a foot panel 37. "Seat panel 30 is fixedly secured to the retracting frame 25." (Peck Col. 3 ll. 45-46). Foot panel 37, thigh panel 33, and head panel 31 are all pivotable relative to retracting frame 25.

**Claim 83**

Peck fails to teach or suggest a combination including "...the deck including a **seat section pivotable** relative to the intermediate frame to move between first and second positions..." as required by amended claim 83 (emphasis added). Peck simply does not disclose a seat section pivotable relative to an intermediate frame. As mentioned above, Seat panel 30 in Peck is fixedly secured to retracting frame 25 and therefore cannot pivot relative to retracting frame 25.

Therefore, Applicants believe that amended claim 83 is in condition for allowance with respect to Peck. Removal of the rejection and allowance of amended claim 83 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where each limitation is expressly disclosed.

**Claims 84-89**

Claims 86, 87 and 89 depend from claim 83. In that claim 83 is believed to be allowable, claims 86, 87 and 89 are also believed to be allowable. Removal of the rejections and allowance of claims 86, 87 and 89 is respectfully requested.

Claims 84-85 depend from allowable generic claim 83. Accordingly, Applicants submit that claims 84-85 are appropriate for consideration and are likewise in condition for allowance.

Claim 88 depends from allowable generic claim 86. Accordingly, Applicants submit that claim 88 is appropriate for consideration and is likewise in condition for allowance.

Claim 97

For the reasons stated above for claim 83, Peck fails to teach or suggest a combination including “...the deck including a **seat section pivotable** relative to the intermediate frame to move between first and second positions...” as required by amended claim 97.

Applicants believe that claim 97 is in condition for allowance with respect to Peck. Removal of the rejection and allowance of claim 97 is respectfully requested. If the Examiner should disagree with the Applicants’ arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claims 98-102

Claims 99-102 depend from claim 97. In that claim 97 is believed to be allowable, claims 99-102 are also believed to be allowable. Removal of the rejections and allowance of claims 99-102 is respectfully requested.

Claim 98 depends from allowable generic claim 97. Accordingly, Applicants submit that claim 98 is appropriate for consideration and is likewise in condition for allowance.

§ 102(b) in view of Pupovic

Applicants respectfully submit that the Pupovic patent simply does not support the Examiner’s rejection of claims 90, 94-97 and 99-101 under 35 U.S.C. § 102(b) in light of the amendments to claims 90, 96 and 97.

Pupovic relates to a hospital bed with adjustable positions. Pupovic includes a support 1, a horizontal support 6, slides 12, a plurality of actuators 9, 15, 17, 21 and deck sections 7, 11, 13. As shown in Figs. 3-5 of Pupovic, deck section 11 does not pivot relative to horizontal support 6.

Claim 90

Pupovic fails to teach or suggest a combination including “...the deck including a **seat section pivotable** relative to the intermediate frame to move between first and second positions...” as required by amended claim 90 (emphasis added). Pupovic simply does not disclose a seat section pivotable relative to an intermediate frame. Section 11 in Pupovic is fixed to slides 12 which move on and parallel to horizontal support 6. As taught in Pupovic, section 11 is incapable of pivoting relative to horizontal support 6.

Therefore, Applicants believe that amended claim 90 is in condition for allowance with respect to Pupovic. Removal of the rejection and allowance of amended claim 90 is respectfully requested. If the Examiner should disagree with the Applicants’ arguments, the

Examiner is asked to kindly point out with particularity where each limitation is expressly disclosed.

Claims 91-96

Claims 93-96 depend from claim 90. In that claim 90 is believed to be allowable, claims 93-96 are also believed to be allowable. Removal of the rejections and allowance of claims 93-96 is respectfully requested.

Claims 91-92 depend from allowable generic claim 83. Accordingly, Applicants submit that claims 91-92 are appropriate for consideration and are likewise in condition for allowance.

Claim 97

For the reasons stated above for claim 90, Pupovic fails to teach or suggest a combination including "...the deck including a **seat section pivotable relative to the intermediate** frame to move between first and second positions..." as required by amended claim 97.

Applicants believe that claim 97 is in condition for allowance with respect to Pupovic. Removal of the rejection and allowance of claim 97 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claims 98-102

Claims 99-102 depend from claim 97. In that claim 97 is believed to be allowable, claims 99-102 are also believed to be allowable. Removal of the rejections and allowance of claims 99-102 is respectfully requested.

Claim 98 depends from allowable generic claim 97. Accordingly, Applicants submit that claim 98 is appropriate for consideration and is likewise in condition for allowance.

**Final Remarks**

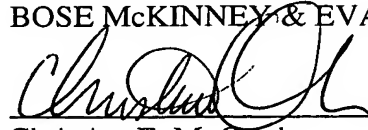
In view of the foregoing amendments and remarks, it is respectfully submitted that all of the solicited claims are condition for allowance. Such action is respectfully requested.

The Examiner is invited to contact the undersigned at the telephone number provided below should any question or comment arise during reconsideration of this matter.

If necessary, Applicants request that this Response be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this Response be charged to the account of Bose McKinney & Evans LLP, Deposit Account Number 02-3223.

Respectfully submitted,

BOSE McKINNEY & EVANS LLP

A handwritten signature in black ink, appearing to read 'Christine E. M. Orich', is written over a horizontal line.

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